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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,211	06/06/2000	Francis R. Koperda	191910-1061	9999

7590 10/18/2002

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EXAMINER

CARDONE, JASON D

ART UNIT

PAPER NUMBER

2142

DATE MAILED: 10/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/588,211

Applicant(s)

KOPERDA ET AL.

Examiner

Jason D Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See Attached Office Action*.

DETAILED ACTION

1. This action is responsive to the remarks of the applicant (Paper No. 5) filed on 8/7/02. Claims 19-28 are presented for further examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshikawa et al. "Yoshikawa", U.S. Patent No. 6,249,532, in view of Land et al. "Land", U.S. Patent No. 5,751,706.

Regarding claim 19, Yoshikawa discloses a method of providing statistics for billing users of data services provided over a cable television network comprising the steps of:

monitoring session duration of a link to a network access device and storing data related thereto [Yoshikawa, col. 3, line 35 - col. 4, line 60 and col. 8, line 14 - col. 9, line 61];

monitoring amount of data transferred to and from a network access device and storing data related thereto [Yoshikawa, col. 3, line 35 - col. 4, line 60, col. 8, line 14 - col. 9, line 61, and col. 11, lines 26-64]; and

monitoring data lost in the link and storing data related thereto, the statistics permitting a flexible billing structure [Yoshikawa, col. 3, line 35 - col. 4, line 60, col. 11, lines 26-64, and col. 14, line 46-60].

Yoshikawa does not specifically disclose monitoring amount of data lost in the link. However, Land, in the same field of endeavor, discloses monitoring amount of data lost in the link [Land, col. 15, line 41 - col. 17, line 62]. It would have been obvious to one having the ordinary skill in the art, at the time the invention was made, to incorporate monitoring an amount of data lost, taught by Land, into the communication system, taught by Yoshikawa, since Land suggests establishing a call path through a packet based network, similar to the network disclosed by Yoshikawa [Yoshikawa, col. 1, lines 9-62], to be connected to a telecommunications network. One of ordinary skill in the art would have been motivated to modify Yoshikawa to include the data lost amount, in view of Land, in order to account for packet lost rate. Therefore, it would have been obvious to combine Yoshikawa and Land (Yoshikawa-Land) to obtain the invention as specified in claim 19.

4. Regarding claim 20, Yoshikawa-Land further discloses the step of monitoring and storing the start time of the session [Yoshikawa, col. 17, lines 11-61] [Land, col. 14, lines 1-63].

5. Regarding claim 21, Yoshikawa-Land further discloses the steps of subtracting the amount of lost data from the amount of transferred data to obtain an amount of

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actual data transferred and billing proportional to the amount of actual data transferred and session duration [Yoshikawa, col. 9, lines 1-61 and col. 16, lines 6-21] [Land, col. 15, line 41 - col. 17, line 62].

6. Regarding claim 22, Yoshikawa-Land further discloses the steps of recording the address of the network access device and of apparatus to which the network access device is linked during the session [Yoshikawa, col. 10, lines 33-65 and col. 18, lines 42-58] [Land, col. 9, line 52 - col. 10, line 60].

7. Regarding claim 23, Yoshikawa-Land further discloses the step of providing a plurality of service tiers depending on maximum shared bandwidth or bit rate [Yoshikawa, col. 7, lines 27-53] [Land, col. 15, line 59 - col. 16, line 27].

8. Regarding claim 24, Yoshikawa-Land further discloses the flexible billing structure comprises a fee determined by amount of actual data communicated during a session [Yoshikawa, col. 8, lines 14-67] [Land, col. 15, lines 20-36].

9. Regarding claim 25, Yoshikawa-Land further discloses the step of monitoring quality of service provided a subscriber determined by additionally monitoring jitter and delay [Yoshikawa, col. 8, line 14 - col. 9, line 61 and col. 11, lines 26-64] [Land, col. 15, line 41 - col. 17, line 62].

10. Regarding claim 26, Yoshikawa-Land further discloses the step of storing preauthorized level of service data for subscribers, an administration computer communicating the preauthorized level of service data to a link access controller for regulating service at the preauthorized level [Yoshikawa, col. 1, lines 9-62] [Land, col. 5, line 30 - col. 6, line 61].

11. Regarding claim 27, Yoshikawa-Land further discloses the step of receiving parametric statistical data for a session of a network access device at an administration computer [Yoshikawa, col. 11, lines 26-64 and col. 14, line 46-60] [Land, col. 5, line 30 - col. 6, line 61 and col. 16, lines 10-55].

12. Regarding claim 28, Yoshikawa-Land further discloses the parametric statistical data comprises amount of data transferred and amount of data lost [Yoshikawa, col. 11, lines 26-64 and col. 14, line 46-60] [Land, col. 5, line 30 - col. 6, line 61 and col. 16, lines 10-55].

Response to Arguments

13. Applicant's arguments filed 8/7/02 have been fully considered but they are not persuasive.

14. (A) Yoshikawa does not disclose billing based on an amount of data transferred to and from nor on amount of data lost.

As to point (A), Yoshikawa does disclose monitoring amount of data transferred to and from and data lost in the link by monitoring the programs sent and their response

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and errors that occur during transmission [Yoshikawa, col. 8, line 14 - col. 9, line 61, col. 11, lines 26-64 and col. 14, line 46-60]. During patent examination and prosecution, claims must be given their broadest reasonable interpretation. *In re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993); *In re Prater*, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969). Yoshikawa does not specifically disclose monitoring amount of data lost in the link. However, Land, in the same field of endeavor, discloses monitoring amount of data lost in the link [Land, col. 15, line 41 - col. 17, line 62]. It would have been obvious to one having the ordinary skill in the art, at the time the invention was made, to incorporate monitoring an amount of data lost, taught by Land, into the communication system, taught by Yoshikawa, since Land suggests establishing a call path through a packet based network, similar to the network disclosed by Yoshikawa [Yoshikawa, col. 1, lines 9-62], to be connected to a telecommunications network. One of ordinary skill in the art would have been motivated to modify Yoshikawa to include the data lost amount, in view of Land, in order to account for packet lost rate. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

15. (B) Land does not disclose amount of data transferred and amount of data lost.

As to point (B), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Land does

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disclose monitoring the status (errors) of the path (link) [Land, col. 11, line 46 – col. 12, line 20 and col. 17, lines 42-48]. Yoshikawa does disclose monitoring amount of data transferred to and from and data lost in the link by monitoring the programs sent and their response and errors that occur during transmission [Yoshikawa, col. 8, line 14 - col. 9, line 61, col. 11, lines 26-64 and col. 14, line 46-60]

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D. Cardone, whose telephone number is (703) 305-8484. The examiner can normally be reached on Monday through Thursday from

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9:00am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart, can be reached on (703) 305-4815.


The fax numbers for the organization where this application or proceeding is assigned are as follows:

(703) 746-7238 (After Final Communications)

(703) 746-7239 (Official Communications)

(703) 746-7240 (For Status inquiries, Draft Communications)

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 305-3900.


ZARNI MAUNG
PRIMARY EXAMINER


Jason D. Cardone

October 17, 2002